

04-28584

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case No. 04-35867-GFK

Chapter 7

Jeffrey Dilley
Jacqueline Dilley,

Debtor(s)

NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY

TO: The Debtor(s) and other entities specified in Local Rule 9013-3(a).

1. JPMorgan Chase Bank as Trustee moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 10:30 a.m., on November 8, 2004, in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered no later than November 3, 2004 which is three days before the time set for the hearing(excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than October 28, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, or holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on October 8, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. By mortgage dated May 1, 2002, in the original principal amount of \$163,800.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. A560172, Movant acquired a first mortgagee's interest in the following real property (the "Property"), to-wit:

That part of Lot 13, Boudins Acres 2nd Addition, Scott County, Minnesota, lying Easterly of the following described line: Beginning at a point in the North line of said Lot 13, said point midway between the Northeast and Northwest corner thereof; thence Southerly to a point in the South line of said Lot 13, said point midway between the Southeast and Southwest corner thereof, and there terminating

The Mortgage was Recorder in the offices of the recorded, for Scott County, Minnesota on August 20, 2002, as Document No. A560172. A copy of the Mortgage and assignment are attached hereto as Exhibit A.

7. The last payment received from Debtors was applied to the February, 2004 payment as that was the next payment due. Debtor(s) are delinquent under the terms of the note secured by the Mortgage with respect to monthly payments due as follows:

3 payments @ \$1,490.76	\$4,472.28
1 payment @ \$1,572.23	1,572.23
4 payments @ \$1,573.34	6,293.36
8 late charges @ \$62.25	498.00
Attorneys Fees & Cost	<u>2,350.35</u>
TOTAL	\$15,186.22

The outstanding principal balance due Movant under the terms of the note is \$161,575.98 as of October 18, 2004, and interest accrues at the rate of 8.375% per diem per day. On information and belief, the Property is also encumbered by a second mortgage in favor of Household Mortgage in the approximate amount of \$25,500.00. The amount therefore due and owing on said note is as follows:

Principal	\$161,575.98
Late charges	498.00
Interest	10,159.92
Attorneys Fees & Costs	<u>2,350.35</u>
TOTAL	\$174,584.25

The fair market value of the Property as averred by the debtor is approximately \$200,000.00

8. Movant does not have, and has not been offered, adequate protection of its interest in the Property. In view of the fact that this is a Chapter 7 liquidation proceeding, the Property is not necessary for an effective reorganization. Moreover, Debtor(s) failure to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1), entitling Movant to relief from the automatic stay.

9. If testimony is necessary as to any facts relevant to this motion, Nancy A. Nordmeyer, 7300 Metro Boulevard #390, Edina, MN, will testify on behalf of Movant.

10. This is an attempt to collect a debt and any information obtained will be used for that purpose. This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

WHEREFORE, Movant, respectfully moves the Court for an Order modifying the automatic stay of Sec. 362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as may be just and equitable.

Dated: 10.22.01.

Signed: /e/ Nancy A. Nordmeyer

SHAPIRO & NORDMEYER, L.L.P.

Nancy A. Nordmeyer-121356

Lawrence P. Zielke-152559

Attorney for Movant

7300 Metro Boulevard #390

Edina, MN 55439-2306

(952) 831-4060

VERIFICATION

I, Dan Aentzer, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

10.19.02

Signed:

[Signature]

Fidelity National Foreclosure Solutions
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120

Doc. No. A 560172

OFFICE OF THE COUNTY RECORDER
SCOTT COUNTY, MINNESOTA

Certified Filed and/or Recorded on

08-20-2002 at 11:00 Receipt: 204991

Pat Boeckman, County Recorder 01

Fee: \$ 21.00

Registration tax of \$ 376.74 paid
Treasurer's Receipt No. 204991
Conservation Fee Paid

James Ray County Auditor

LOAN NO.: 2002-1027R

0002040072

(Space Above This Line For Recording Date)

x All Dominion
MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **MAY 1, 2002** together with all Riders to this document.

(B) "Borrower" is **JEFFREY DILLEY AND JACQUELINE DILLEY, HUSBAND AND WIFE**

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is **HOMESTEAD MORTGAGE CORPORATION**

Lender is a Corporation organized and existing under the laws of **THE STATE OF MINNESOTA**
Lender's address is **4105 N LEXINGTON AVENUE, SUITE 100**
ARDEN HILLS, MN 55126

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **MAY 1, 2002**

The Note states that Borrower owes Lender

ONE HUNDRED SIXTY-THREE THOUSAND EIGHT HUNDRED AND 00/100

Dollars (U.S. \$ **163,800.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **JUNE 1, 2032**

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3024 1/01

Lender Form Inc. (800) 448-3555
LFI #FNMA3024 1/01 (A)

Page 1 of 13

Initials: *ce gp*

Doc. No. A 622417

OFFICE OF THE COUNTY RECORDER
SCOTT COUNTY, MINNESOTA

Certified Filed and/or Recorded on

09-03-2003 at 11:00 Receipt: 315589

Pat Boeckman, County Recorder 01

Fee: \$20.00

Parcel Tax ID #: 22-139 314 Loan No.: 2002-1027F
This form was prepared by: HOMESTEAD MORTGAGE CORPORATION 7681623
address: 4105 N LEXINGTON AVENUE, SUITE 100 4605
ARDEN HILLS, MN 55126
tel. no: 651-490-4179

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is
4105 N LEXINGTON AVENUE, SUITE 100 X JPMorgan Chase Bank as Trustee, c/o Residential Funding
ARDEN HILLS, MN 55126 Corporation, 2255 North Ontario, Suite 400, Burbank, CA 91504-3190
does hereby grant, sell, assign, transfer and convey, unto the X

a corporation organized and existing under the laws of THE UNITED STATES OF AMERICA
(herein "Assignee"), whose address is

a certain Mortgage dated MAY 1, 2002, made and executed by
JEFFREY DILLEY AND JACQUELINE DILLEY, HUSBAND AND WIFE

to and in favor of HOMESTEAD MORTGAGE CORPORATION

upon the following described property situated in
SCOTT County, State of MN
That part of Lot 13, Boudins Acres 2nd Addition, Scott County, Minnesota,
lying Easterly of the following described line: Beginning at a point in
the North line of said Lot 13, said point midway between the Northeast and
Northwest corner thereof; thence Southerly to a point in the South line of
said Lot 13, said point midway between the Southeast and Southwest corner
thereof, and there terminating.

After Recording Return To:
PEELLE MANAGEMENT CORPORATION
ASSIGNMENT JOB #90815
P.O. BOX 30014
X RENO, NV 89520-3014
(775) 827-9600

such Mortgage having been given to secure payment of

\$163,800.00
(Include the Original Principal Amount)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-35867-GFK
Chapter 7

Jeffrey Dilley
Jacqueline Dilley,

Debtor(s)

MEMORANDUM OF LAW

JPMorgan Chase Bank as Trustee ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) was delinquent in respect of payments due under the note and mortgage. Since this case was filed Debtor(s) have made no payments to Movant and as of this date thereof are in arrears in the total amount of \$15,186.22.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 7 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$174,584.25. [The property is encumbered by a second mortgage in favor of Household Mortgage in the approximate amount of \$25,500.00] The fair market value of the property is approximately \$200,000.00.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: _____

10.22.01

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

By /s/ Nancy A. Nordmeyer
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

I, **Stephanie Pilegaard** says that on October 22, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

Jeffrey Dilley
14714 Hampshire Ave South
Savage, MN 55378

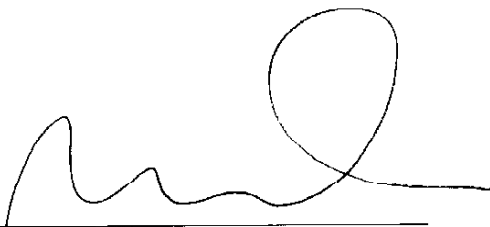
Jacqueline Dilley
14714 Hampshire Ave South
Savage, MN 55378

Harvey Radke, Esq.
105 Riverdale Drive
Hastings, MN 55033

John A. Hedback, Esq.
2855 Anthony Lane S., STE 201
St. Anthony, MN 55418

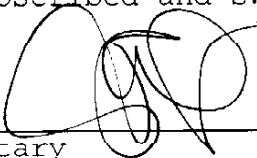
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

Household Mortgage
PO Box 5207
Carol Stream, IL 60197

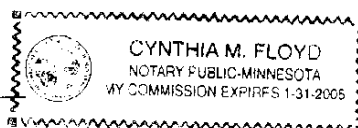


Stephanie Pilegaard

Subscribed and sworn to before me October 22, 2004.



Notary



04-28584
043995602

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-35867-GFK

Jeffrey Dilley
Jacqueline Dilley,

Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on November 8, 2004.

THIS CAUSE coming to be heard on the motion of JPMorgan Chase Bank as Trustee, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED, that the automatic stay heretofore entered in this case is modified to the extent necessary to allow JPMorgan Chase Bank as Trustee, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

That part of Lot 13, Boudins Acres 2nd Addition, Scott County, Minnesota, lying Easterly of the following described line: Beginning at a point in the North line of said Lot 13, said point midway between the Northeast and Northwest corner thereof; thence Southerly to a point in the South line of said Lot 13, said point midway between the Southeast and Southwest corner thereof, and there terminating

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____.

United States Bankruptcy Judge